



Issue Summary from EPA/WV Conference Call on Phase I WIP on November 5, 2010

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Cc: Leo Essenthier, Katherine Antos, Richard Batiuk, Robert Koroncai, Brian Trulear, Jennifer Molloy, Mark Smith, dubin.mark, jsweeney, cbrosch, David McGuigan, gshenk, Hank Zygmunt, James Edward,

Scott, Dave, Matt and Steve,

I would like to thank you for taking the time to meet with us Friday November 5, to address remaining issues toward submittal of a final Watershed Implementation Plan for the West Virginia portion of the Chesapeake Bay basin. I think we had a very productive discussion and were able to cover each item on the agenda. We were able to resolve or identify a pathway forward toward resolution for each issue. This note is to summarize the outcome of each issue discussion and identify the follow-up actions.

1. Reasonable Assurance for agricultural BMPs

- EPA is reviewing the new revised input deck received on 11/4 and expects to have results to communicate to WV on 11/11.
- WV BMP implementation rates have been going up and we anticipate these improvements are reflected in the input deck and together with other improvements, reflected in the input deck, we are hopeful the new deck will hit allocations.
- WV will add significant narrative to the WIP to reflect improvements in WV agricultural BMP programs accomplished prior to the draft WIP as well as since the draft WIP was submitted. This is important to achieve consistency between the input deck and WIP and to support reasonable assurance. EPA agreed to review in draft right away.
- In the most recent input deck review, EPA noticed and corrected a calculation error EPA had made an earlier input deck review. The error resulted in an overestimation of nutrient loading reductions from mortality composting. Correction of the mistake resulted in less credit for implementation of this BMP than WV had been expecting and WV identified this as a problem.
- WV proposed that EPA allow the miscalculation to go uncorrected in the final WIP and agree to make a correction in WIP phase 2. EPA did not agree to this approach.
- EPA and WV did agree to wait for the new input deck results on 11/11. If allocations are met, the problem that became apparent with EPA's error correction would become moot. We are hopeful this will be the case.
- If allocations are missed, we will attempt to verify if this is resulting from the error correction. If missed allocations are due to the error correction, we agreed to consider options including convening an EPA/WV conference call immediately to agree on additional input deck revisions quickly, that reflect additional reductions WV could support in its WIP narrative. We have scheduled a call with for Friday 11/12 at 10AM should we need it.
- EPA can commit to running a revised input deck within a week of preparing it with WV. Should this scenario be needed, EPA would be in a position to provide the results to WV in time for Phase I final WIP due on 11/29.

- EPA is not inclined to agree to allow such an error to go uncorrected regardless of whether it was EPA's or WV's error. We will consider the results from the latest input deck on 11/11 and explore additional options should that prove necessary.

2. Closing gap between sediment allocation and WIP Input Deck

- EPA agreed to increase WV's S allocation consistent with the P allocation adjusted for N:P exchange described in 3 below. This increase should result in attainment of the S allocation in WV Potomac while still attaining SAV and clarity standards in tidal fresh Potomac.
- EPA and WV noted that recent input deck results, to be available on 11/11, may still show a gap in attainment of S allocation in the very small WV Portion of the James. EPA and WV are both considering options to address this possibility, such as increased conservation efforts in this forested sliver of the James watershed.

3. Nitrogen:Phosphorus exchange request

- EPA will grant WV's N:P exchange request
- EPA and WV estimate the exchange will result in a decrease in the P allocation of approximately 100k lbs P and a corresponding increase of the N allocation at a 5:1 ratio.
- WV and EPA will agree on the exact amount of the P exchange upon review of the results of latest input deck (Thursday 11/11).

4. Revised Stormwater Section

- WV is reviewing EPA comments on their revised WIP stormwater sections and incorporating EPA comments.
- WV agreed the final WIP will include additional discussion on WV intentions and contingencies for addressing currently un-regulated stormwater, and for increases in implementation rates of tree planting, street sweeping and urban stream restoration BMPs included in recent input deck.
- EPA is reviewing new input deck and will look for consistency between input deck and revised stormwater narrative.

5. Negligible loads for WWTPs

- EPA agreed with WV explanation that small sources described as "negligible" in draft WIP likely have little to no impact on nutrient and sediment loads—once through cooling water, nutrients not pollutants of concern-- and agreed that WV will reevaluate this concept in Phase 2.

6. Update of CAFO regulations

- The definition of large CAFO in WV's newly adopted CAFO regulations is not consistent with the federal CAFO regulations. EPA has documented this in letter to WVDEP and noted that WV's regulations are otherwise consistent with federal rules and implementable. WV

has agreed to revise the definition via emergency rulemaking and include a paragraph in final WIP documenting definition is being revised.

7. WWTP Updates

- WV noted recent DEP decision to re-open the significant WWTP permits to include limits consistent with the TMDL instead of waiting for permit expiration and reissuance. EPA expressed support for this decision.
- WV noted new Senate bill proposing funding for WWTP upgrades. Good news.

Participants in 11/05/10 Conference Call:

State participants were: Scott Mandirola, Division Director, DEP Div Water and Waste Mgmt; Dave Montali, TMDL Coordinator, DEP; Matt Monroe, Assistant Director, Environmental Programs, WV Department of Agriculture; and Steve Hannah, Chesapeake Bay WIP coordinator, WV Department of Agriculture. EPA participants were: Rob Wood, Deputy Director (Acting), Chesapeake Bay Program Office (CBPO); Leo Essenthier, TMDL Coordinator EPA Region 3; Katherine Antos, WIP Review Team, CBPO; Bob Koroncai, Bay TMDL Program Manager, EPA Region 3; Rich Batiuk, Associate Director for Science, CBPO; Brian Trulear, EPA Region 3; Mark Smith, EPA Region 3, Jenny Molloy, Stormwater Lead, CBPO, Mark Dubin, CBPO; and Jeff Sweeney, CBPO.

Thank you again for taking the time to meet with us and having these in-depth discussions so that we are able to move forward with a watershed implementation plan that meets the nutrient and sediment allocations as well as reasonable assurance. We have arranged another call for Friday 11/12 at 10 o'clock to discuss the results of the new input deck and Leo Essenthier is the point of contact for that call. Please contact me or Leo if you have any questions.

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